

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JERIANNE KANE, et al.,

11 No. 1:20-cv-01805-DAD-JLT

12 Plaintiffs,

13 v.

14 IXIA HOLDINGS, LLC, et al.,

15 Defendants.

ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE STAYED PENDING
NINTH CIRCUIT DECISION

16 YASMIN CHILDS,

17 No. 1:20-cv-01806-DAD-JLT

18 Plaintiff,

19 v.

20 IXIA HOLDINGS, LLC, et al.,

21 Defendants.

ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE STAYED PENDING
NINTH CIRCUIT DECISION

22 KIRSTEN HAYE,

23 No. 1:20-cv-01810-DAD-JLT

24 Plaintiff,

25 v.

26 IXIA HOLDINGS, LLC, et al.,

27 Defendants.

ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE STAYED PENDING
NINTH CIRCUIT DECISION

1 The above-captioned matters are state-law actions concerning nursing homes' responses
2 to the coronavirus pandemic. They were initially filed in California state courts and were
3 subsequently removed to this U.S. District Court on the basis of federal-question jurisdiction.
4 The notice of removal in each case asserts, among other things, that the state law causes of action
5 are preempted by the Public Readiness and Emergency Preparedness Act, 42 U.S.C. §§ 247d-6d
6 and 247d-6e (2006) (the "PREP Act"). Plaintiffs in each action have filed a motion to remand.

7 On October 21, 2021, the Ninth Circuit held oral argument in *Saldana v. Glenhaven*
8 *Healthcare LLC*, No. 20-56194. According to the opening brief, the issues presented to the Ninth
9 Circuit for review in *Saldana* were as follows:

10 1. Did the district court err in its interpretation and application of
11 the federal officer removal statute, 28 U.S.C. § 1442(a)(1), by failing
12 to recognize that Defendants' response to the pandemic was at the
13 specific direction of, and to assist, the federal government, such that
14 Defendants were "acting under" a federal officer as contemplated by
15 § 1442(a)(1) and *Watson v. Philip Morris Cos.*, 551 U.S. 142 (2007)?
16 2. Did the district court err in its interpretation of the PREP Act's
17 complete preemptive effect by failing to construe the various
18 components of the PREP Act together?
19 3. Did the district court err in failing to recognize that Plaintiffs'
20 state claims raise embedded federal issues pursuant to *Grable & Sons*
21 *Metal Products v. Darue Engineering & Manufacturing*, 545 U.S.
22 308 (2005) that compel granting federal jurisdiction because of the
23 need for uniformity in the interpretation and enforcement of federal
24 law in responding to the COVID-19 pandemic, which has affected
25 every state in the country?

26 *Saldana*, Doc. No. 16, at 17–18.

27 The parties in the above-captioned matters have briefed similar issues. (See *Kane*, Doc.
28 No. 21 (in opposition to motion to remand, making arguments concerning PREP Act, *Grable*, and
29 federal officer statute); *Childs*, Doc. No. 19 (similar); *Haye*, Doc. No. 18 (similar) *Roccaro*, Doc.
30 No. 1 (similar, in notice of removal).) Given the pending appeal before the Ninth Circuit, it
31 appears to the court that a stay until the Ninth Circuit issues its decision in *Saldana* may be
32 warranted.

33 /////
34 /////

1 Accordingly, within fourteen days of the date of entry of this order, the parties are ordered
2 show cause in writing why these matters should not be stayed until the Ninth Circuit issues its
3 decision in *Saldana*. Any responses to this OSC must be no longer than seven pages in length.
4 Alternatively, the parties in each case may file a stipulation addressing the procedural situation.
5 **IT IS SO ORDERED.**

Dated: November 12, 2021

Dale A. Droyd
UNITED STATES DISTRICT JUDGE